

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

Section 63.71 Application of )  
Time Warner ResCom of New York, LLC for )  
Authority to Discontinue Domestic )  
Telecommunications Services )

WC Docket No. 04-229  
Comp. Pol. File No. 686

**ORDER**

**Adopted:** July 15, 2004

**Released:** July 15, 2004

By the Chief, Competition Policy Division:

**I. INTRODUCTION**

1. In this Order, we grant the application of Time Warner ResCom of New York, LLC (Time Warner ResCom or Applicant) to discontinue the provision of certain U.S. domestic telecommunications services, pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act),<sup>1</sup> and section 63.71 of the Federal Communications Commission's (Commission) rules.<sup>2</sup> For the reasons set forth below, we grant Time Warner ResCom authority to discontinue service as of July 15, 2004.

**II. BACKGROUND**

2. On May 25, 2004, Time Warner ResCom filed an application with the Commission requesting authority under section 214(a) of the Act and section 63.71 of the Commission's rules to discontinue certain domestic telecommunications services. Time Warner ResCom specifically states that it seeks authority pursuant to section 63.71 to discontinue the provision of certain circuit-switched local exchange toll services in the Rochester, New York area, affecting approximately 3000 customers.<sup>3</sup> Time Warner ResCom submits that it is a non-dominant carrier with respect to the services it seeks to discontinue. Time Warner ResCom states that it plans to discontinue these services as of July 15, 2004, but instead plans to offer alternative packet-switched services. The application further states that, on April 14, 2004, Time Warner ResCom sent a letter

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<sup>1</sup> 47 U.S.C. § 214(a).

<sup>2</sup> 47 C.F.R. § 63.71.

<sup>3</sup> Time Warner ResCom Application at 2-3.

informing its customers of its new packet-switched offer and providing the names of other local service providers offering service in the area.<sup>4</sup>

3. By Public Notice issued on June 14, 2004, the Commission notified the public that, in accordance with section 63.71(c) of its rules, the application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of the notice, unless the Commission notified Time Warner ResCom that the grant would not be automatically effective.<sup>5</sup> Accordingly, the Commission stated that pursuant to section 63.71(c), and absent further Commission action, Time Warner ResCom could not terminate services to the customers affected by this application until July 15, 2004. The Commission received one comment in response to the Public Notice.<sup>6</sup> Specifically, Mr. Silverstein, a customer of Time Warner ResCom in the affected area, requests that the Commission not grant authority to discontinue service until all customers have been switched to alternative service, and until Time Warner ResCom has reimbursed customers for a switching fee of approximately \$33.00 a piece.<sup>7</sup> On July 8, 2004, Time Warner ResCom filed a letter indicating that it has offered to pay Mr. Silverstein's switching fee as well as the fees incurred by any other customers that make a similar request.<sup>8</sup> In a letter dated July 9, 2004, Time Warner ResCom provided additional information regarding the status of customers seeking alternative service, and the potential cost of maintaining service past the planned discontinuance date.<sup>9</sup>

4. Section 214(a) of the Act, as amended, states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."<sup>10</sup> The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service, which is an important aspect of the Commission's general obligation under the Communications Act to protect and promote the public interest.<sup>11</sup> As the Commission has stated, "we have retained the

<sup>4</sup> The application states that on May 14, 2004, Time Warner ResCom notified its customers of the planned discontinuance in conformance with section 63.71(a) of the Commission's rules.

<sup>5</sup> *Comments Invited on Application of Time Warner ResCom of New York, LLC to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 04-229, Comp. Pol. File No. 686, DA 04-1709 (rel. June 14, 2004).

<sup>6</sup> See Letter from Barry Silverstein to Federal Communications Commission, WC Docket No. 04-229, Comp. Pol. File No. 686 (June 23, 2004) (Silverstein Comment).

<sup>7</sup> See Silverstein Comment at 1-2.

<sup>8</sup> See Letter from Meabh Purcell, Esq., Counsel for Time Warner ResCom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-229, Comp. Pol. File No. 686 at 1 (July 8, 2004) (Time Warner ResCom July 8 *Ex Parte* Letter).

<sup>9</sup> See Letter from Meabh Purcell Esq., Counsel for Time Warner ResCom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-229, Comp. Pol. File No. 686 at 1 (July 9, 2004) (Time Warner ResCom July 9 *Ex Parte* Letter).

<sup>10</sup> 47 U.S.C. § 214(a).

<sup>11</sup> See 47 U.S.C. § 201.

right to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result,"<sup>12</sup> and will review each application to determine whether proper notice has been given, whether customers or other end users are able to receive service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected.<sup>13</sup>

5. The Commission has considerable discretion in determining whether to grant a carrier authority to discontinue service pursuant to section 214.<sup>14</sup> Balancing the interests of the carrier and the affected user community, the Commission considers a number of factors including: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations.<sup>15</sup>

### III. DISCUSSION

6. We find that the record supports granting Time Warner ResCom's request to discontinue service in accordance with its filed representations in this proceeding. Specifically, considering the five factors identified by the Commission for evaluating applications to discontinue service, we find that Time Warner ResCom has made reasonable accommodations to try and address the concerns of the one commenter in the record; the proposed discontinuance will not result in an unreasonable degree of customer hardship; and, therefore, that there will be no adverse effect on the public convenience and necessity.

7. Applying the first of the Commission's factors, the financial impact of continuing to provide the service for the carrier seeking to discontinue, we recognize that Time Warner ResCom will incur costs of approximately \$105,000 to maintain service for an additional month beyond July 15, 2004.<sup>16</sup> We thus find that the financial impact of continuing to provide service for an extended period beyond the planned discontinuance date could be burdensome. Applying

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<sup>12</sup> *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, CC Docket No. 79-252, 85 FCC 2d 1, 49 (1980).

<sup>13</sup> See 47 C.F.R. § 63.71(a); see, e.g., *AT&T Application to Discontinue Interstate Sent-Paid Coin Service Not Automatically Granted*, Public Notice, NSD File No. W-P-D-497 (Aug. 3, 2001) (requiring AT&T to show how it will minimize the negative impact on the affected customers).

<sup>14</sup> *FCC v. RCA Communications, Inc.*, 73 S.Ct. 998, 1002 (1953). See also *Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003).

<sup>15</sup> *Application for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, File Nos. W-P-C-6670 and W-P-D-364, 8 FCC Rcd 2589, 2600, para. 54 (1993); remanded on other grounds, *Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994). See *Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003).

<sup>16</sup> Time Warner ResCom July 9 Letter at 1.

factors two and three, the need for the services in general and for the particular services in question, we note that Mr. Silverstein asserts that customers that do not know how to switch over, or cannot afford the switching fee, could be forced to "be without vital telephone services that may be required for emergency circumstances."<sup>17</sup> However, considering factor four, we note that Time Warner ResCom indicates that it has informed its customers several times of the various alternatives available, and has provided information on its new packet switched services, as well as the name and number of alternative providers.<sup>18</sup> With respect to factor five, increased charges for alternative services, we acknowledge that Time Warner ResCom is charging its customers a switching fee of approximately \$33.00, and that alternative services may be more costly.<sup>19</sup> However, as indicated above, increased charges for alternative services may be outweighed, as a factor, by other considerations.<sup>20</sup> We find significantly, however, Time Warner ResCom has agreed to pay the switching fee for Mr. Silverstein and any other affected customers that make a similar request.<sup>21</sup> We also note that no other party has filed comments opposing Time Warner ResCom's application or its switching fee charge. The record reflects that the vast majority of affected customers were able to find reasonable alternative services, and that Time Warner ResCom continues to work with the New York Public Service Commission to help remaining customers switch their service or select Time Warner ResCom's new service before July 15, 2004.<sup>22</sup> In balancing the above-mentioned factors, we find that Time Warner ResCom should be allowed to discontinue its services in accordance with its filed representations.

#### IV. ORDERING CLAUSE

8. Accordingly, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, IT IS ORDERED that the application of Time Warner ResCom of New York, LLC to discontinue domestic telecommunications services

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<sup>17</sup> Silverstein Comment at 1-2.

<sup>18</sup> Time Warner ResCom July 8 Letter at 1.

<sup>19</sup> See Silverstein Comment at 1. Mr. Silverstein states that customers with a low income, disabilities, or elderly people may be adversely impacted by the imposition of these switching fees and that Time Warner ResCom should therefore reimburse these fees. *Id.* Mr. Silverstein also states that the monthly charge for service would increase from \$12.96 for the "local only" circuit switched offering that Time Warner ResCom is discontinuing, to \$44.95 per month for Time Warner ResCom's new bundled local and long distance packet-switched offering. *Id.*

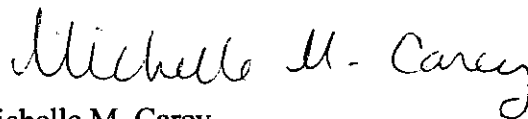
<sup>20</sup> Even though customers may incur increased monthly charges if they opt for Time Warner's bundled packet-switched alternative, there is no indication in the record that customers would incur any increased charges, other than a possible switching fee, to receive the alternatives offered by other available providers.

<sup>21</sup> Time Warner ResCom July 8 Letter at 1.

<sup>22</sup> See Time Warner ResCom July 9 Letter at 1-2.

IS GRANTED to the extent declared herein, consistent with Time Warner ResCom's filed representations in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Michelle M. Carey".

Michelle M. Carey  
Chief, Competition Policy Division  
Wireline Competition Bureau